

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DERRICK J. BENSON**

**APPELLANT,**

**v.  
KANSAS CITY, MISSOURI, BOARD  
OF POLICE COMMISSIONERS**

**RESPONDENT.**

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DOCKET NUMBER WD74283

DATE: May 15, 2012

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Appeal From:

Jackson County Circuit Court  
The Honorable Edith L. Messina, Judge

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Appellate Judges:

Division Four: Lisa White Hardwick, Chief Judge, Presiding, Cynthia L. Martin, Judge and  
Joel P. Fahnestock, Special Judge

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Attorneys:

James T. Thompson and Melissa L. Steed, Kansas City, MO, for appellant.

Lauren A. Horsman, Jefferson City, MO, for respondent.

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MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS  
WESTERN DISTRICT

DERRICK J. BENSON,

APPELLANT,

v.

KANSAS CITY, MISSOURI, BOARD  
OF POLICE COMMISSIONERS,

RESPONDENT.

No. WD74283

Jackson County

Before Division Four: Lisa White Hardwick, Chief Judge, Presiding, Cynthia L. Martin, Judge  
and Joel P. Fahnestock, Special Judge

Derrick Benson ("Benson") sued the Kansas City Board of Police Commissioners ("Board"), alleging that he sustained injuries as a result of a Kansas City, Missouri police officer's negligence. Benson claimed that the Board was vicariously liable under the doctrine of *respondeat superior* because the police officer was an employee of the Board and acting within the scope of his employment. The Board filed a motion for summary judgment, arguing that it was protected from liability by sovereign immunity because, under the public duty doctrine, the police officer owed no duty to Benson. The trial court entered summary judgment in favor of the Board. Benson appeals, claiming that the trial court's entry of summary judgment was contrary to *Southers v. City of Farmington*, 263 S.W.3d 603 (Mo. banc 2008).

**REVERSE AND REMAND.**

**Division Four holds:** Our Supreme Court's holding in *Southers v. City of Farmington* is directly applicable to this appeal. *Southers* held that the public duty doctrine, which provides that public officers owe no duty toward individuals, does not protect government employers from liability where the legislature has waived sovereign immunity for the type of negligence alleged. The trial court erred in accepting the Board's argument that it was entitled to sovereign immunity because, under the public duty doctrine, the police officer owed no duty to Benson. Further, we reject the Board's contention that the police officer must be named as a defendant to the suit as a precondition to the application of the holding in *Southers*.

Opinion by Cynthia L. Martin, Judge

May 15, 2012

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